cannot enlarge the powers of the state by directly delegating power, it cannot do so indirectly. But whatever may be the grounds for the decision, the case stands for the proposition that Congress may in its discretion permit the states to exercise their police power on subjects affecting other states.

The broad construction of the Webb-Kenyon Act given by the Court[14] necessarily follows from this view of its constitutionality. Admitting the enlargement of the states' jurisdiction, the view that the Act referred only to the receipt, possession, sale, or use of liquor in violation of a state law valid under the usual powers of the state and regardless of any increased jurisdiction resulting from the Act[15] is no longer tenable. Under that view, as regulation of the receipt was an interference with interstate commerce and therefore invalid, the state could not regulate interstate shipments for personal use without prohibiting that use, and the Act was thus stripped of much of its intended effect. Under the present construction, the states' power to enforce their prohibition laws is as complete against inter- as against intrastate transportation.

THE KRONPRINZESSIN CECILIE.—In the recent case of *The Kronprinzessin Cecilie* (1 C. C. A. 1916) 56 N. Y. L. J. 915, the claimant's steamship was sued for the non-performance of its contract to deliver shipments of gold at Plymouth and Cherbourg. The vessel sailed from New York on July 27th, 1914. On July 31st, when about 1000 miles from Plymouth, the master received a message from the directors that war had broken out between Germany and England, France and Russia, requiring the ship to return to New York. War had not been declared between those countries, and it was shown that if the ship had continued at its usual rate of speed, it would have cleared from Plymouth about 48 hours and from Cherbourg about 11 hours before they became hostile ports. On the defense of "restraint of princes" being raised, the court held that an actual and operative restraint was necessary and, as there was none in this case, the carrier was not excused from its obligation to deliver the specie. Putnam, J., dissented on the ground that the act of putting back to America was a reasonable exercise of the master's discretion.

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[14]The court holds that under the Act the states have authority, as an incident to their undisputed right to forbid the manufacture and sale of liquors, to restrict the means by which such intoxicants can be obtained for personal use, even if such use is permitted.

[15]See Van Winkle *v.* State (1914) 27 Del. 578, 91 Atl. 385; Brewing Co. *v.* Chicago etc. Ry. (D. C. 1913) 215 Fed. 672; *Ex parte* Peede (Tex. Crim. App. 1914) 170 S. W. 749; Palmer *v.* Southern Exp. Co. (1914) 129 Tenn. 116, 165 S. W. 236; Brennen *v.* Southern Exp. Co. (S. C. 1916) 90 S. E. 402; 16 Columbia Law Rev. 1. The case of Adams Exp. Co. *v.* Kentucky (1915) 238 U. S. 190, 35 Sup. Ct. 824, affirming s. c. 154 Ky. 462, 157 S. W. 908, holding under facts nearly analogous to those in the present case that the Webb-Kenyon Act was not applicable, is distinguished by the Court on the ground that the Kentucky court had decided that the state statute did not apply to interstate commerce and therefore that there was no violation of a state law intended. But the decision of the Kentucky court was founded on the belief that the Webb-Kenyon Act did not warrant state regulation of interstate shipments for a permissible use. Under the correct interpretation of the Act, a contrary holding would have resulted.

Since the earlier rule that an actual physical restraint was necessary to constitute "restraint of princes"[1] has been supplanted by the more equitable doctrine that the property does not have to be subject to physical coercion,[2] a rather difficult distinction has been drawn between what is called an actual restraint and the mere apprehension of restraint.[3] Under the English rule a deviation to avoid a peril[4] does not amount to a restraint, but the American rule seems to be more liberal.[5]

The case, however, should have been decided on another theory raised by the defense.[6] Where a shipper sues the carrier for nonperformance of a contract of carriage by sea, the case may not be disposed of as if the libelant's goods were the only ones to be carried.

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[1]*Cf.* Lubbock *v.* Rowcroft (1803) 5 Esp. 50; Hadkinson *v.* Robinson (1803) 3 Bos. & P. 388; Forster *v.* Christie (1809) 11 East, 205. This rule has been ascribed to the doctrine that the clause refers to the loss of the goods, not of the voyage. Forster *v.* Christie, *supra*; Schmidt *v.* United Ins. Co. (1806) 1 Johns. *249.

[2]Geipel *v.* Smith (1872) L. R. 7 Q. B. 404; Nobel's Explosives Co. *v.* Jenkins [1896] 2 Q. B. 326.

[3]Kacianoff *v.* China Traders' Ins. Co. Ltd. [1913] 3 K. B. 407; Oliver *v.* The Maryland Ins. Co. (1813) 11 U. S. 487. The abandonment is certainly from an apprehension of capture where the port of discharge is blockaded, as in Geipel *v.* Smith, *supra*. The decisions, it seems, should be placed on the ground that at the time of abandonment the danger of capture is so imminent that if the contract were performed the ship would not apparently escape. The restraint must be judged as of the time of abandonment, and commercial men are entitled to act on reasonable probabilities. Embiricos *v.* Reid & Co. [1914] 3 K. B. 45; *cf.* The Styria (1902) 186 U. S. 1, 22 Sup. Ct. 731. The rule of Atkinson *v.* Ritchie (1809) 10 East, 530, that the restraint must be actual and operative has been considered insupportable as a general principle in the light of more recent English decisions. Scrutton, Charter Parties (6th ed.) 204, n. *r*. A reasonable apprehension of restraint will justify a deviation for delay. *Cf.* Carver, Carriage by Sea (5th ed.) 112. Sir R. Phillimore in the Express (1872) L. R. 3 A. & E. 597, said that even where the chances of capture and escape are equal, the master is not bound to proceed.

[4]Becker Gray & Co. *v.* London Assur. Corp. [1915] 3 K. B. 410, aff'd. [1916] 2 K. B. 156; see British & Foreign Marine Ins. Co. Ltd. *v.* Sanday & Co. [1916] A. C. 650; 16 Columbia Law Rev. 523. It is clear that in reality the deviation is to avoid the future peril of capture in cases like Geipel *v.* Smith, *supra*.

[5]*Cf.* The Styria (2 C. C. A. 1900) 101 Fed. 728, aff'd. on this point 186 U. S. 1, 22 Sup. Ct. 731.

[6]The three defenses which the court considered were: 1, the master had a discretion to turn back under the circumstances, which could not be questioned unless exercised unreasonably; 2, the abandonment was due to a restraint of princes; 3, the owners under the circumstances were justified in giving the orders to turn back. The first defense was dismissed by the statement that the master acted under orders from the directors of the company. The fact that orders have been given and the master in his action follows those orders does not as a matter of law take away his discretion. The Styria (1902) 186 U. S. 1, 22 Sup. Ct. 731. The third defense was dismissed by Bingham, J., on the ground that the claimant, being one of the principals to the contracts of carriage, had no discretionary powers. It is to be noted that in the case (Atkinson *v.* Ritchie, *supra*) cited by him in support of this proposition there was but one cargo, so that the question of the conflicting interests of the cargo-owners could not be raised. It is not clear whether Dodge, J., regarded the defense in the same light.

There is a duty on the shipowner toward all the shippers. He must weigh the conflicting interests represented by the various cargoes.[7] The master has a discretion to act for any one of the cargo-owners in the presence of impending danger on the theory that only he can decide what should be done in time to take immediate action.[8] In the present case, the directors had a better knowledge of the true state of facts than the master or the shippers, and the same reason for granting the discretion to them to weigh the conflicting interests would exist. The court apparently considered that if the master had acted with a true knowledge of the exact state of facts existent at the time of turning back, the shipper would have been excused.[9] If this is the assumption of the court, the result is strange. The principal would be exempt when the agent, acting on his own knowledge of the true state of facts, abandons the voyage, but would not be exempt when the agent, under the same circumstances, performed exactly the same act under orders from the principal.

TAXABLE "NET INCOME" UNDER THE CORPORATION EXCISE TAX LAW OF 1909.—The Federal Corporation Excise Tax Law of 1909 subjects every corporation (with enumerated exceptions) engaged in business in any state or territory of the United States to a special excise tax equivalent to one per cent. of the entire net income received during the year from all sources over and above $5000.[1] It is of little importance for the purpose of this discussion to consider the various meanings of the term "income",[2] for the statute expressly defines the "net income" which is taxable as the remainder of the gross income after certain specified deductions. But in determining what is gross income, questions of some difficulty arise to which the statute furnishes no ready answer. Does the appreciation resulting from the sale of capital assets, such as realty or securities, constitute a part of gross income?[3] By the English decisions under income tax laws,

[7] New York & Porto Rico S. S. Co. *v.* Guanica Centrale (2 C. C. A. 1916) 231 Fed. 820; *cf.* Balfour Guthrie & Co. *v.* Portland & Asiatic S. S. Co. (D. C. 1909) 167 Fed. 1010; The Savona [1900] P. 252.

[8] Scrutton, *op. cit.* 232. In The Kronprinzessin Cecilie, the evidence showed that if the ship had pursued her course any further she would not have had enough coal to return to New York in case of necessity.

[9] This is assumed because the court debates so thoroughly whether the master exercised discretion or obeyed orders.

[1] 36 Stat. 112, § 38. This statute, passed in order to avoid the effect of Pollock *v.* Farmers' Loan & Trust Co. (1895) 158 U. S. 601, 15 Sup. Ct. 912, which declared unconstitutional the Income Tax Law of 1894, was held constitutional as a tax on the privilege of doing business as a corporation. Flint *v.* Stone Tracy Co. (1910) 220 U. S. 107, 31 Sup. Ct. 342. Though it was repealed by the Income Tax Law of 1913, 38 Stat. 172, its provisions are substantially reënacted in the latter statute as a tax directly on income. An act of September 8th, 1916, has raised the tax to two per cent. Under the 1909 statute a corporation was not subject to the tax unless it was doing business, McCoach *v.* Minehill Ry. (1913) 228 U. S. 295, 33 Sup. Ct. 419, but since the 1913 Act taxes income, it makes no difference whether the corporation is doing business or not.

[2] Black, Income Taxes, § 32 *et seq.*

[3] Ordinarily, if stocks or bonds held in trust are sold at an increase, this increase as between life tenant and remainderman is principal, not income. Matter of Gerry (1886) 103 N. Y. 445, 9 N. E. 235; Graham's Estate (1901) 198 Pa. 216, 47 Atl. 1108.